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S.B. CIVIL REVISION PETITION NO.507/2006.
(Jawari Devi Vs. Smt. Gawari Devi)

Date of Order :: 12.12.2006.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. R.K. Thanvi, for the petitioner.
Mr. G.L.Singhvi, for the non-petitioner.

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An application for temporary injunction submitted by the plaintiff-petitioner with her civil original suit was allowed on 13.09.1990 by the Additional Munsif No.1, Jodhpur; however, the order passed by the learned Munsif was set aside by the appellate court on 28.07.1992 after allowing an application under Order 19 Rule 1 & 2 CPC and permitting cross-examination of the deponents the matter was sent back to the trial court for deciding the application for temporary injunction afresh.

Assailing the said order dated 28.07.1992 passed by the appellate court as an order of remand, this matter was presented as a Civil Miscellaneous Appeal under Order 43 of the Code of Civil Procedure and was admitted on 27.07.1994. However, in the stay application it was ordered that only the proceedings in relation to the matter of temporary injunction shall remain stayed.

Later, on 04.05.1998, this Court found, while passing final orders on stay application, that Civil Misc. Appeal was not competent and at the prayer of learned counsel for the appellant, the appeal was directed to be treated as a revision petition. Thereafter, this matter has been registered as S.B. Civil Revision Petition No. 507/2006 and has been placed for consideration before the Court.

The order dated 28.07.1992 sought to be impugned in this revision petition, viewed from any angle, is nevertheless an interlocutory order and cannot be assailed in the revisional jurisdiction of this Court in view of the amendment to Sec. 115 of the Code of Civil Procedure by the Amendment Act No. 46 of 1999 and in view of the law explained by the Hon'ble Supreme Court in the case of Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers & Ors., (2003) 6 SCC 659. This revision petition is, therefore, required to be dismissed as incompetent.

The record of the trial court received in this matter shows that the civil suit in question had already registered some progress inasmuch as after framing of issues on 04.04.1995 the statements of the witnesses on behalf of the plaintiff were being recorded and summoning of certain witnesses was closed on 30.10.1995 and the plaintiff-petitioner was directed to get the other witnesses summoned

or to present themselves on the next date. The progress of the civil suit thereafter was stalled as the record was sent to this Court and is still lying with this petition.

In the aforesaid view of the matter, the revision petition is dismissed as incompetent. Record of the trial court be returned immediately. It shall be permissible for the parties to request the trial court to proceed with the trial of the suit expeditiously.

(DINESH MAHESHWARI), J.

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